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Math-U-See, Inc., Steve Demme

and Ethan Demme

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

SUSAN LYNCH, MATH-U-SEE INDIANA, INC., LISA ANGLE, JIM ANGLE, PAULA HOLMES and	:	
MATH-U-SEE OREGON, INC.,	:	
Plaintiffs	:	Civil Action No. 3:11-CV-233-JD-CAN
v.	:	
MATH-U-SEE, INC., STEVE DEMME, ETHAN DEMME,	:	
Defendants	:	

**DEFENDANTS' MOTION TO DISMISS IN PART  
PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants, Math-U-See, Inc., Steven Demme, and Ethan Demme, move the Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Counts V through X of Plaintiffs' Second Amended Complaint, and in support thereof state as follows:

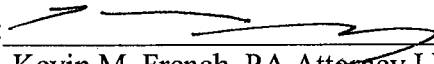
1. Plaintiffs' claims arise from their disagreement with the way in which the distributor relationship with Math-U-See, Inc. ended.
2. The Plaintiffs agreed, in their Distributor Agreements with Math-U-See, Inc., that their business relationship "shall be governed by the laws of the State of Pennsylvania." (Second Amended Complaint (hereinafter "SAC"), Ex. A ¶ 7, Doc. 48).
3. Despite this choice of law provision, Plaintiffs have attempted to insert extraneous claims under Indiana, Idaho, and Tennessee law, respectively. (*See* SAC Counts VI-VIII ).

4. Plaintiffs have also attempted to insert extraneous claims by re-casting their breach of contract claims as tort claims. (See SAC Counts V, IX, and X).
5. Plaintiffs' extraneous claims should be dismissed.
6. Additionally, Plaintiffs' claims at Counts V, VII, and VIII should be dismissed for failure to state a basis upon which relief may be granted.

THEREFORE, Defendants, Math-U-See, Inc., Steven Demme, and Ethan Demme, respectfully request that the Court enter an Order dismissing, with prejudice, Counts V through X of Plaintiffs' Second Amended Complaint.

HARTMAN UNDERHILL & BRUBAKER LLP

Date: 7/30/12

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